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4 ***E-FILED - 1/13/11***
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

12 UNITED STATES OF AMERICA.,

13 Plaintiff,

14 NO. CR-03-20010-RMW

15 v.
16 KEVIN DUGAN,

17 Defendant.

18 ORDER DENYING MOTION FOR
19 RELEASE PENDING APPEAL
20 [Docket No.377]

21 Defendant-Appellant Kevin Dugan filed a Motion for Release Pending Appeal on
22 October 11, 2010. The government filed its opposition on December 17, 2010 as
23 requested by the court. The motion is hereby denied.

24 Defendant has not shown that he is unlikely to flee and is not a danger to the
25 community. Although the defendant appeared at all pretrial proceedings and for trial and
26 sentencing, he attempted to escape from custody while serving his sentence. The
27 defendant also expressed a desire to possess certain weapons after his planned escape.
28 Although the court places little weight on statements a confidential informant reported that
Dugan made about his desire to harm certain individuals, the court is troubled by his
statement to an undercover agent that he wanted to possess certain weapons after he
escaped.

1 The defendant's grounds for appeal have been raised by him before and rejected.
2 None raises a substantial issue. As for his claim that the Speedy Trial Act was violated, a
3 close review of the record shows that defendant was very manipulative and most of the
4 delay pending trial was the result of defense requests.

5 Defendant's Fourth Amendment claims were fully heard and found to be without
6 merit. The court did grant his Fifth Amendment claim in part and certain statements were
7 excluded at trial. The ones that were admitted were clearly voluntary and made before
8 defendant was in custody. Finally, defendant's claim that the evidence was insufficient to
9 show he possessed more than 100 plants completely ignores evidence from several
10 sources which established that he possessed far more than 100 plants.

11 Defendant's claim that exceptional circumstances justify his release is also not
12 persuasive. The claimed exceptional circumstances are that he was convicted for the
13 violation of federal marijuana laws but his underlying conduct was not criminal under
14 California law, that he has a severe case of diabetes and is not getting appropriate medical
15 care, and that his appeal may not be finally resolved until after he has completed the
16 service of his sentence.

17 The conduct for which defendant was convicted was criminal under California law.
18 Mass growing of marijuana, possessing marijuana for distribution and maintaining an
19 establishment for the growing of marijuana are all prohibited by California statute. It is also
20 notable that although defendant at various times has claimed a doctor's prescription
21 entitled him to possess marijuana, he testified at trial that he lied to his doctor to get the
22 prescription and has never used marijuana for medical or other purposes. He claimed he
23 got the prescription so he could show it to some people who he thought would better accept
24 him when he showed them the prescription. He said he wanted to infiltrate that group of
25 people because he believed they stole some of his firearms which he wanted to recover.

26 Defendant's claim that his diabetes is not being adequately attended is based solely
27 on allegations made in his brief. There is no evidence, however, that defendant cannot be
28 adequately treated while incarcerated.

1 Defendant's concern that his appeal may not be resolved prior to the completion of
2 his sentence does not justify his release. Further, throughout this case, defendant has
3 utilized an extraordinary number of attorneys resulting in delays and has sought additional
4 time for other reasons which have resulted in delay. The time spent in getting his case
5 finally resolved has been in large part the result of his own doing.

6 For the above reasons, among others, defendant's motion for release on appeal is
7 denied.

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9 Dated: 1/12/11



10 RONALD M. WHYTE
11 United States District Judge

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